MONTANA LEGISLATIVE HISTORY

Chapter 328 19 99

Bill H _____ S 212 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar05	✓ C	Hearing Date(s)	Jan30	✓ C
	Mar06	✓ C		Feb06	✓ C
	_____	____ C		_____	____ C
	_____	____ C		_____	____ C
Date Out	_____	____ C			

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

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SB 212 INTRODUCED BY MCNUTT, ET AL. *LC0969 DRAFTER: MACMASTER*

REQUIRE A JURY AWARD OF PUNITIVE DAMAGES TO BE UNANIMOUS AS TO LIABILITY AND AMOUNT

1/22	INTRODUCED		
1/22	FIRST READING		
1/22	REFERRED TO JUDICIARY		
1/30	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/11	2ND READING PASSED	31	18
2/12	3RD READING PASSED	30	20
	TRANSMITTED TO HOUSE		
2/13	FIRST READING		
2/13	REFERRED TO JUDICIARY		
3/05	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/03	2ND READING CONCURRED AS AMENDED	60	37
4/05	3RD READING CONCURRED	65	35
	RETURNED TO SENATE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	50	0
4/10	3RD READING CONCURRED AS AMENDED	38	12
4/15	SIGNED BY PRESIDENT		
4/16	SIGNED BY SPEAKER		
4/16	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 328		
	EFFECTIVE DATE: 04/21/97		

SB 213 INTRODUCED BY MAHLUM, ET AL. *LC0496 DRAFTER: MARTIN*

REVISE THE PROPERTY TAX EXEMPTION FOR A DISABLED VETERAN OR SURVIVING SPOUSE

1/23	INTRODUCED		
1/23	FIRST READING		
1/23	REFERRED TO TAXATION		
1/23	FISCAL NOTE REQUESTED		
1/29	FISCAL NOTE RECEIVED		
1/29	FISCAL NOTE PRINTED		
1/30	HEARING		
2/01	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/07	2ND READING PASSED	49	0
2/08	3RD READING PASSED	47	0
	TRANSMITTED TO HOUSE		
2/10	FIRST READING		
2/10	REFERRED TO TAXATION		
3/05	HEARING		
3/06	COMMITTEE REPORT—BILL CONCURRED		
4/08	2ND READING CONCURRED	98	1
4/09	3RD READING CONCURRED	99	1
	RETURNED TO SENATE		
4/14	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 301		
	EFFECTIVE DATE: 01/01/98		

SB BILL NO. 212

INTRODUCED BY Matt Mc[illegible]

Holden

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A JURY VERDICT FOR PUNITIVE DAMAGES TO BE UNANIMOUS AS TO LIABILITY AND AMOUNT; AND AMENDING SECTION 27-1-221, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-221, MCA, is amended to read:

"**27-1-221. Punitive damages -- liability -- proof -- award.** (1) Subject to the provisions of 27-1-220 and this section, reasonable punitive damages may be awarded when the defendant has been found guilty of actual fraud or actual malice.

(2) A defendant is guilty of actual malice if ~~he~~ the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and:

(a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or

(b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

(3) A defendant is guilty of actual fraud if ~~he~~ the defendant:

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

(4) Actual fraud exists only when the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of that reliance. The contract definitions of fraud expressed in Title 28, chapter 2, do not apply to proof of actual fraud under this section.

(5) All elements of the claim for punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence but less than beyond a reasonable doubt.

(6) Liability for punitive damages must be determined by the trier of fact, whether judge or jury. A jury verdict determining that a defendant is liable for punitive damages must be unanimous as to liability

and amount.

(7) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be determined by the jury in an immediate, separate proceeding and be submitted to the judge for review as provided in subsection (7)(c). In the separate proceeding to determine the amount of punitive damages to be awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

(b) When an award of punitive damages is made by the judge, ~~he~~ the judge shall clearly state ~~his~~ the reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

(i) the nature and reprehensibility of the defendant's wrongdoing;

(ii) the extent of the defendant's wrongdoing;

(iii) the intent of the defendant in committing the wrong;

(iv) the profitability of the defendant's wrongdoing, if applicable;

(v) the amount of actual damages awarded by the jury;

(vi) the defendant's net worth;

(vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;

(viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and

(ix) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive damages.

(c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (7)(b). If after review the judge determines that the jury award of punitive damages should be increased or decreased, ~~he~~ the judge may do so. The judge shall clearly state ~~his~~ the reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (7)(b).

(8) ~~Nothing in this~~ This section is not intended to alter the Montana Rules of Civil Procedure governing discovery of a defendant's financial affairs, financial condition, and net worth."

-END-

law because he pulled the ship into the harbor to protect his people from a threatening storm, he could use the defense of necessity.

SEN. JABS asked if this bill would help?

Ms. Baker said it could create some confusion about which defense applied. If you used force to protect someone from harm, it really is self defense. The statutes as written work fine.

Closing by Sponsor:

{Tape: 1; Side: a; Approx. Time Count: 10:24; Comments: .}

SEN. CRIPPEN closed on SB 196.

EXECUTIVE ACTION ON SB 196

Motion/Vote: **SEN. HALLIGAN MOVED SB 196 BE TABLED. MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON SB 205

Motion/Vote: **SEN. MCNUTT MOTION SB 205 DO PASS. MOTION CARRIED UNANIMOUSLY.**

HEARING ON SB 212

Sponsor: **SEN. WALTER MCNUTT, SD 50, Sidney**

Proponents: **Greg VanHorssen, State Farm Insurance**
John Alke, Montana Defense Trial Lawyers
Chris Galls, Montana Chamber of Commerce
Riley Johnson, National Federation of Independent Business

Opponents: **Russell Hill, MTLA**
Zander Blewett, Attorney

Opening Statement by Sponsor:

SEN. WALTER MCNUTT, SD 50, Sidney, introduced SB 212. The intent of this bill is to require a unanimous verdict by a jury when determining punitive damages.

Proponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 10:27; Comments: .}

Greg VanHorssen, State Farm Insurance, rose in support of SB 212. The concept of punishment is one that has existed for ages in our criminal codes. There are several methods employed by society to exact punishment. One is incarceration. A second is penalties paid by the offending person against the state or society. That

penalty can be over and above compensation the victim receives, for the purposes of teaching the offender a lesson. Punitive damages in the civil forum is also a punishment tool. The concept of punitive damages is where a court or jury decides that the conduct which has taken place rises to the level to require additional payment by the guilty offender. There appears to be a discrepancy between the level of proof in the criminal sphere for exacting financial punishment versus the civil sphere in exacting punitive damages. In a criminal case, the decision by the jury must be unanimous. Senate Bill 212 requires the same proof if punishment is to be exacted in the civil sphere. This does not affect the issue of liability for compensatory damages.

John Alke, Montana Defense Trial Lawyers, rose in support of SB 212. He stated that punitive damages were unusual. Before the jury gets to the consideration of punitive damages, the jury has already made the plaintiff whole. To sustain an award of punitive damages there first must be an actual damages award and actual damages of a plaintiff have already been determined. There is then a second hearing on punitive damages. Because the plaintiff has already been fully compensated, the nature of the punitive damages is reflected at how mad the jury is at the defendant. This consideration has almost no objective boundaries and is causing a great deal of difficulty in the law. There have been a number of cases in the United States Supreme Court on trying to define a due process limit around punitive damages. An example is the case where an individual thought his paint job was bad on his new BMW. He received a $4000 verdict and a multi-million dollar punitive damage award against BMW. This bill wants to make sure that the showing is so compelling that everyone agrees. In federal court, civil verdicts must be unanimous. This bill would make it the same in state court.

Chris Galls, Montana Chamber of Commerce, rose in support of SB 212.

Riley Johnson, National Federation of Independent Business, rose in support of the bill.

Opponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 10:37; Comments: .}

Russell Hill, MTLA, stated that this bill made it harder to punish a corporation than to punish an ax murderer. The comparison to criminal punishment is appealing on the surface. In a criminal case, the state government is the overwhelming powerful entity coming against an individual. The deprivation of liberty for an individual is the most fundamental right. In a punitive damage case, an individual plaintiff goes against the resources of huge defendants. You can't incarcerate a corporation. In a criminal case, if the verdict is not unanimous, a mistrial is declared and the state has the right to bring charges again to retry the case. The state has seen the

entire defendant's case and is now in a better position. In SB 212, if there is a hung jury, it's over. The defendant gets off. Punitive damages have been used by the legislature to punish very serious conduct and deterring that conduct. **(EXHIBIT 1 - page 2)** In 1995 there were bills on punitive damages which would have preserved the public policy of the damages. A huge portion of those damages would have been given to health care, education, or lowering taxes. They supported those bills. The corporate interests killed the bills. There is biblical support of punitive damages. In Exodus 22:9, you had to pay double when you were found guilty. The legislature is getting onto thin ice in trying to deal with these uniquely judicial procedural matters.

Zander Blewett explained that comparing this to federal court is wrong. In federal court, a unanimous jury verdict is required for every issue. If the plaintiff alleges he was damaged by the negligence or wrongful conduct of an individual who acted with malice, there has to be a unanimous verdict on every point. If the verdict is 5 to 1, the plaintiff does not lose. If the verdict is 1 to 5, the plaintiff does not lose. There is a retrial. This bill states a jury verdict determining that a defendant is liable for punitive damages must be unanimous. Plaintiff must be unanimous but if the defense is not unanimous the plaintiff still loses. The legislature has redefined malice and made it very difficult. They redefined fraud and made it extremely difficult. They changed the standard to clear and convincing evidence as compared to a preponderance of the evidence. In a bifurcated trial, this bill could have a 8 to 4 requirement for compensatory, liability, or proximate cause claims and in the same proceeding an unanimous vote on the rest. In a civil action you can collect money damages for fraud and punitive damages for fraud. It is extraordinarily difficult to get punitive damages from a jury.

{Tape: 1; Side: b; Approx. Time Count: 10:52; Comments: .}

Questions From Committee Members and Responses:

{Tape: 1; Side: 2; Approx. Time Count: 10:45; Comments: .}

SEN. HALLIGAN asked how many punitive damage awards there have been in the last few years?

Mr. Blewett stated the one he remembers is where three elderly people were defrauded by Equitable on their life insurance policies. Six million dollars was awarded for punitive damages. They proved malice and fraud.

Mr. Alke remembered another punitive damage award in a case involving an accident near Townsend wherein an employee of a beer distributor was drunk and caused an accident. The employee hit a highway patrol vehicle. The individual in the car sued. After being fully compensated, the jury awarded over a million dollars in punitive damages against the beer distributor. In that case

the punitive damage award exceeded the net worth of the company. There are not a lot of punitive damage cases. If the case is egregious, the plaintiff will get all twelve jurors.

Mr. Zander stated that in the Havre case, the vote was 9 to 3. Under this proposed rule, there would have been no punitive damages.

SEN. HALLIGAN felt that whether the jury was mad or not, they still needed to show malice and fraud which are the legal requirements involved.

Mr. Alke explained that in a fraud case, malice must be proven before there is an actual damages award. Before they get to punitive damages, the plaintiff has been fully compensated with actual damages. In the case of the drunk driving case, there is no fraud. There was an accident and the allegation was that the primary party's actions were so egregious that punitive damages were awarded.

SEN. STEVE DOHERTY commented that the BMW case was a Tennessee case and that there were apparently no boundaries in Tennessee. In Montana, we have heard of two instances of punitive damage cases. Given the difference between an 8/4 or 9/3 verdict and an unanimous verdict, how many punitive damage awards would this bill have affected in Montana in the last five years?

Mr. Alke did not know. Punitive damage awards are not frequent but this does not mean we should not try to strive for a reasonable balance.

SEN. DOHERTY felt that the levels of proof were inaccurate. We already require different levels of proof as far as punitive damages.

Mr. Alke felt the evidentiary standards on proof were the same. The jury instructions are different. There are no criminal evidentiary standards on punitive damages so there would still be all the standard instructions on the burden of proof in a civil trial.

SEN. DOHERTY asked how voir dire would be handled? Would there be legitimate grounds for a judge to excuse a juror for cause if that individual indicates that under no circumstances will they be willing to grant punitive damages?

Mr. Alke explained that he did not feel that this bill addressed what the standard for excusal for cause would be. Whatever the grounds are now will exist if this bill is passed. Anytime there is a potential juror who indicates in voir dire that they will not follow instructions given on the law, there would be grounds to have that juror stricken for cause.

SEN. DOHERTY asked what the judges would instruct as far as punitive damages? Will the jurors be told that the verdict must be unanimous?

Mr. Alke commented that it would be an instruction. They would be told if the vote is not 12/0 there would be no award of punitive damages. The jury will be fully knowledgeable. **Mr. Blewett** interpreted this bill as only being unanimous in favor of the plaintiff and it did not have to be unanimous in favor of the defendant. That was not the intent of the bill. In federal court it works both ways. The way to cure that is on page 1, line 30, the words "that a defendant is liable" could be stricken and the words "on a claim" inserted.

SEN. BARTLETT asked what the jury size would be in these cases?

Mr. Alke stated that in state district court there would be twelve but the parties could always agree to something smaller. In federal court it is six.

SEN. BARTLETT asked what the current standard for a guilty verdict or an award of punitive damages is in terms of how many jurors of the twelve are needed to vote in favor of the verdict.

Mr. Alke stated it was a 3/4 verdict in state court. A unanimous verdict in federal court both on actual and punitive damages.

SEN. BARTLETT, referring to the beer distributor case, felt that there were indications that the employer not only tolerated but also encouraged the employees to enjoy the product of the distributor.

Mr. Alke recollected that the plaintiffs put on evidence which suggested that to be true. The defendants put on evidence that that was not true. On actual damages, the distributor is fully liable for the damages caused by the driver under basic master/service. It is important that jurors understand that when they are looking at punitive damages they are looking at an extraordinary special creature. The higher requirement makes a great deal of sense.

SEN. BARTLETT stated that if an employer allowed their employees to drink on the job, why would it make a difference if it took twelve jurors rather than eight jurors to award punitive damages?

Mr. Alke explained that before they get to punitive damages, the plaintiff has been fully compensated. If four jurors wanted $50 million in punitives, four jurors wanted $1 million and four wanted it to be $100,000, a unanimity requirement would cause those jurors to get to the point where they meet the verdict standard. They negotiate among themselves, and come to a reasonable result. He felt that this bill would be a limitation intentionally designed to control punitive damages. When you get to punitive damages, there are no standards. It is the feelings

of the jury which drive the end result. The feeling should be s strong that everyone agrees to punitives or not. If this bill i amended so this is symmetrical, it would work both ways.

SEN. BARTLETT stated that if one juror believed that the defendant had engaged in egregious conduct which caused considerable harm and did so knowingly and intentionally and tha the plaintiff should be awarded $15 million of punitive awards and the other eleven on the jury agreed to a damage award but would not go for $15 million, the defendant would not suffer any form of punitive damages because that one juror hung the jury.

Mr. Alke felt that the plaintiff would be fully compensated on actual damages. Punitive damages are bonus coverage time. He did not feel hung juries were permitted in a civil trial.

Mr. Zander stated there would be hung juries every time they could not reach unanimity and it would have to be done over. In federal court, where it is unanimous, a 5/1 vote would mean the entire trial would have to be redone.

SEN. REINY JABS questioned **Mr. Hill's** reference to the bible wherein he talked about paying double for damages. He felt punitive damages were way more than double.

Mr. Hill commented that his reference to the bible was that you paid double regardless of punitive damages. He added that if th amendment which **Mr. Alke** mentioned was adopted, which would caus this to work both ways, they would feel comfortable with that amendment.

SEN. RIC HOLDEN asked what was wrong with giving plaintiffs punitive damages? He thought that punitive damages were awarded to the plaintiff from the personal assets of the defendant and that most insurance policies did not pay punitive damages.

Mr. VanHorssen stated that most insurance companies did not cove punitive damages unless they were bought as a separate and distinct coverage. State Farm asked him to support this bill fo the philosophy of this bill. If we are talking about punishment we should use the same standard. They should use the same jury requirements to exact punishment in the civil court as are used in the criminal court.

SEN. HOLDEN was concerned with the possibility of a widow paying punitive damages out of her personal assets.

Mr. Vanhorssen stated that could be the case.

SEN. HOLDEN stated that **Mr. Hill** targeted the corporations but h felt individuals could be assessed punitive damages.

Mr. Hill agreed.

SEN. AL BISHOP asked if the worth of the defendant was a part of the proof in the punitive damage phase.

Mr. Zander answered it was the pivotal part. The net worth of the company is pivotal on the amount of punitive damages.

SEN. BISHOP asked who set the standard as to how much of the worth of the defendant the jury be allowed to award?

Mr. Zander stated that the 1986 Legislature built in two safeguards. The district judge must review the 11 or 12 factors and make specific findings that each of those factors were met. The Supreme Court looks at it on review thereafter.

SEN. DOHERTY questioned the scenario where the jury awarded a billion dollars and the assets of the corporation were $100,000. Wouldn't a district judge reduce that amount?

Mr. Alke felt that in the beer distributor case the district judge did reduce the damages and the Supreme Court reversed him.

CHAIRMAN CRIPPEN commented that if a juror felt that a plaintiff was not being properly compensated for actual damages, he could shift over to punitive damages.

Mr. Zander felt they could put that into compensatory damage.

CHAIRMAN CRIPPEN countered that in compensatory damages there were specific points which needed to be adhered to, but if a juror wanted the plaintiff to have more he could do so by a punitive damage award.

Mr. Hill stated that in the 1995 Legislative Session, the medical malpractice bill specifically stated they would not inform the jury of the cap because of the assumption that if they knew one area was capped, they will transfer damages.

Closing by Sponsor:

SEN. MCNUTT commented that there are a lot of corporations in this state which are small businesses. When punitives are justified they should be awarded. Referring to **SEN. BARTLETT'S** concern about one juror hanging the jury, he felt that if that juror was convinced that the defendant should be punished that juror could get that accomplished by coming into line with the rest of the jury. **EXHIBIT 2** - letter from Prof. Gregory S. Munro.

EXECUTIVE ACTION ON SB 173

Motion: **SEN. MCNUTT MOVED SB 173 DO PASS.**

Discussion: **SEN. DOHERTY** questioned if The Child Support Division had said anything regarding the bill?

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 1/30/97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		✓
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN			✓
BRUCE CRIPPEN, CHAIRMAN	✓		

SEN:1995
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CS-09

DATE 1/30/97

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 196, SB 205, SB 212

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Beth Bakes	Dept of Justice	196		✓
Riley Johnson	NFIB	212	✓	
Riley Johnson	Mt. Broadcasters Assn	205	✓	
John Alke	Mt Defense Trial Lawyer	212	✓	
Zander Blewett	Individual	212		✓
B. Schalmann	State Farm.	212	✓	
Russell B. Hill	MT Trial Lawyers	212		✓
CHRIS J. GALLUS	MT CHAMBER	212	✓	
Jacqueline Lenmark	Am. Ins. Ass'n	212	✓	
Greg VanHoosen	State Farm Ins.	212	✓	
Brad Griffin	MT Hardware Implement Assn	212	✓	
Charles R. Brooks	Billings Chamber	212	✓	

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liability for an act you committed. In this case, there were people who didn't understand what it took to file the insurance claim. It would be bad policy for the legislature to take one isolated case and enact legislation when the system already runs quite well.

Vote: The **MOTION CARRIED** with **SEN. JABS, ESTRADA** and **GROSFIELD** voting no.

EXECUTIVE ACTION ON SB 212

{Tape: 1; Side: a; Approx. Time Count: 8:33; Comments: .}

Amendments: sb021201.avl - **EXHIBIT 1**

Motion: **SEN. MIKE HALLIGAN MOVED TO AMEND SB 212.**

Discussion: **SEN. HALLIGAN** explained that the amendment addressed the language at the bottom of page 1 after the word "a" on line 30 "that a defendant is liable" would be stricken. This would require a jury verdict to be unanimous for punitive damages as to liability and the amount. This would make it consistent with federal law. This is the amendment **Rus Hill** asked for and that **John Alke** indicated would make the bill consistent with federal jury verdict practice with respect to punitive damages.

SEN. HOLDEN stated that the language would then read "a jury verdict determining a claim for punitive damages."

Mr. Alke stated he understood what **SEN. HALLIGAN** proposed. He stated that when they testified they assumed the purpose of the bill was to use the federal standard of unanimous jury verdict symmetrical for punitives. That may not have been the intent of the bill. **SEN. WALTER MCNUTT** may want an asymmetrical standard requiring unanimity at one end. The amendment makes it clear that what is intended is a symmetrical unanimity requirement. The argument of the plaintiffs was that the original bill attempted to impose a unanimity requirement only on a finding of liability and that it did not require a unanimity requirement for a finding of no liability. The amendment attempts to clarify that it is a unanimity requirement both that there is liability for punitive damages or that there is not. It would also have to be unanimous on the amount. In state court on any civil matter when the jury is asked to render a verdict, there must be at least eight members agreeing on the verdict. In federal court there is a unanimity requirement.

CHAIRMAN CRIPPEN asked if there would be a hung jury under a punitive verdict?

Mr. Alke did not believe there would ever be a hung jury in a civil case. In a criminal case, the defendant is either guilty or not. In a civil case the jury gets to negotiate the verdict from top to bottom. There are jurors who have found the

defendant liable and award one dollar. In theory you can have a hung civil jury. In a punitive damages case, they have already voted for actual liability and voted to award damages. For a hung jury, the jury would have to say they had already voted for liability and they already voted to award actual damages and then they would have to throw that whole verdict out and say they could not agree to anything. He says that does not happen in the federal system where there is a unanimity requirement.

SEN. HOLDEN asked **Greg Van Horssen** if he was familiar with the amendment.

Mr. Van Horssen commented that he was aware in concept that an amendment was being prepared but he had not seen the amendment. He felt that (6) as amended appeared to require a unanimous decision by the jury as to whether punitives will be awarded or a unanimous decision by the jury as to whether punitives will not be awarded and the amount. His concern is precisely what would happen if the jury can't agree one way or the other as to liabilitY. What happens to the case at that point in time? In the criminal sphere, unanimous is required to exact the punishment. Unanimous is not required to not exact the punishment. He has a concern that this amendment may be construed to require a unanimous verdict for not awarding punitives.

SEN. MCNUTT stated that the intent of the bill was that if someone was being held liable for punitives there would be a unanimous verdict by the jury. It becomes confusing when language is interjected which states there has to be a unanimous decision not to award punitives.

CHAIRMAN CRIPPEN clarified that without the amendment there would have to be a unanimous verdict to award the damages. How about the amount of damages?

SEN. MCNUTT stated that would be the same principle.

CHAIRMAN CRIPPEN questioned if the verdict was 8/4 against punitive damages, would that then be sufficient?

SEN. SUE BARTLETT asked **SEN. MCNUTT** if his intent in this bill was to establish a higher standard for determining that punitive damages are owed and what the amount would be and a lower standard for determining that punitive damages are not owed? The way the bill was written, in order for a plaintiff to receive punitive damages in a trial, the jury of 12 people would have to agree unanimously that punitive damages should be paid and all 12 would also have to agree that the amount of punitive damages should be "X" amount. The amendment would make it a requirement that a defendant would not receive punitive damages only if there is a unanimous verdict.

SEN. MCNUTT answered that his intent was unanimity in both the fact that punitives would be awarded as well as an unanimous decision in the amount.

SEN. BARTLETT asked what his intent was in relation to a jury finding that punitive damages should not be awarded?

SEN. MCNUTT assumed that if an unanimous decision could not be reached that spoke to the issue that there would not be punitives.

SEN. STEVE DOHERTY stated that the arguments for making this the same as the federal standard are premised on the notion of symmetry as well as the notion that what is good for the goose is also good for the gander. It is a fundamental question of fairness. Having a double standard and a different standard both ways would violate equal protection and due process and would make this bill and the requirement for a unanimous jury verdict one way to award damages but not require an unanimous verdict to not award damages. This is fundamentally flawed because of the unfairness to both sides. This would be giving one party a major leg up as opposed to the equal playing field. The amendment would cut both ways.

SEN. GROSFIELD disagreed. In the criminal system it is 12/0. If it is 11/1, there is no conviction. Why is that not a double standard under the same scenario?

SEN. DOHERTY explained that as we are just learning in the O. J. Simpson case, there are different standards of proof. There are different evidentiary issues. It involves civil versus criminal. The civil law system is fundamentally different from the criminal law system. Punishment in criminal law is based on a deprivation of freedom. In civil law, not only was the person negligent but with the evidentiary standards, malice and fraud have been shown in that negligence. That is the reason for punishing civilly, not criminally.

CHAIRMAN CRIPPEN stated that under present law it would be 8/4 as to punitive damages and amount. This would be the same standard as for compensatory damages. Under the federal law it is unanimous in both areas.

Mr. Alke commented that the jury verdict in federal court must be unanimous on both.

CHAIRMAN CRIPPEN further explained that with the amendment the same jury would be unanimous for punitive and the amount of punitives. That would go along with punitive damages being designed for penalty and have nothing to do with making the plaintiff whole. Why wouldn't it be appropriate to make it unanimous all the way around?

Mr. Alke stated that when they testified in support of the bill, they assumed the bill was simply attempting to apply the federal unanimous verdict requirement to the state court finding of punitive damages. They polled their members after the hearing and explained that the intent of the bill was a much more rigorous standard. The vote of his board was that they would support the bill with the proposed amendment.

SEN. GROSFIELD asked if there would be equal protection problems with the bill without the amendment?

Mr. Alke felt the plaintiff's bar would argue that it was. He believes that the plaintiffs bar would argue that this bill as originally written was unconstitutional. He would not predict what the outcome of that would be.

Vote: The **MOTION FAILED** on a five to five vote.

Motion: **SEN. MCNUTT MOVED SB 212 DO PASS.**

Discussion:

SEN. BARTLETT stated that it was fundamentally unfair to set one standard for one verdict and a different standard for a different verdict. The jury size in federal court is six people. Even without this bill, punitive damage awards would require eight people in state court because the jury is larger. Without this bill, we have a higher standard than the federal government approach to civil trials and punitive damages.

SEN. DOHERTY reiterated that eight is two more than six.

{Tape: 1; Side: b; Approx. Time Count: 8:50; Comments: .}

When the federal system went from twelve to six, they decided there would have to be unanimity on those six individuals for fairness. The prior federal system did not require unanimous verdicts. When you reduce the number of individuals on the jury, you reduce the number of our peers who are supposed to judge these matters. That was the tradeoff. The issue of jury size needs to be flushed out a little more. We have the practitioners from the plaintiffs bar and the defense bar being opposed by one insurance company. In this case we ought to listen to the folks who try the cases. The bill is now unfair.

SEN. HOLDEN stated that punitive damages are not covered by insurance policies. They are specifically excluded. This is a small business issue.

SEN. DOHERTY rebutted that if a policy limits demand is made and the insurance company does not pay, the insurance company can then be on the hook if the award is above the policy limits. If an insurance company has the ability to settle at policy limits

and they don't, that would make them very interested in this bill. If they don't have a dog in the fight, why are they here?

SEN. HALLIGAN commented that a few minutes ago they tabled a bill because it was unfair. This amendment would simply level the playing field. When excellent attorneys, who are on opposing sides all the time say that this amendment is needed for balance, we should take that into consideration.

SEN. ESTRADA said she could no longer support the bill because this is a fairness issue.

SEN. MCNUTT said his interest in this bill was as a businessman and not a lawyer. If punitives were to be awarded, the purpose of this bill would be to make that an unanimous decision, not a majority. He will bow to the legal people, but it is really difficult to stay abreast with this when you are trying to run a business.

Vote: The **MOTION FAILED** on roll call vote.

Amendments: sb021201.avl - **EXHIBIT 1**

Motion: **SEN. HALLIGAN MOVED THAT THE COMMITTEE RECONSIDER THEIR ACTION IN NOT ADOPTING THE AMENDMENT.** sb021201.avl

Discussion: **SEN. MCNUTT** stated that in interest of salvaging the bill, he would be in favor of the amendment. If the amendment makes this a fair issue, he is in favor of the amendment.

Vote: The **MOTION CARRIED UNANIMOUSLY.**

Motion/Vote: **SEN. HALLIGAN MOVED SB 212 DO PASS AS AMENDED.** The **MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON HB 135

{Tape: 1; Side: b; Approx. Time Count: 9:14; Comments: .}

Amendments: hb013502.avl - **EXHIBIT 2**

Discussion:

Ms. Lane explained that in addition to hb013502.avl, the title should have been amended by the House when they adopted the House amendments. They didn't. She recommended that this committee amend the title to conform to the House amendments as well.

Motion: **SEN. HOLDEN MOVED TO AMEND HB 135.**

Discussion: **SEN. GROSFIELD** liked the amendments. The Board of Pardons is the one with the expertise to handle the review. The purpose of this bill as passed last session was to provide a

SENATE STANDING COMMITTEE REPORT

February 6, 1997

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill 212 (first reading copy -- white), respectfully report that Senate Bill 212 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 4.
Following: "VERDICT"
Insert: "DETERMINING A CLAIM"

2. Page 1, line 30.
Following: "determining"
Strike: "that a defendant is liable"
Insert: "a claim"

-END-

Amd. Coord.
Sec. of Senate

281626SC.SRF

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 2/6/97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN	✓		
BRUCE CRIPPEN, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 2/2/97 BILL NO. SB 212 NUMBER 1

MOTION: Mc Nutt - Do Pass

NAME	AYE	NO
SUE BARTLETT		✓
AL BISHOP		✓
STEVE DOHERTY		✓
SHARON ESTRADA		✓
MIKE HALLIGAN		✓
RIC HOLDEN	✓	
REINY JABS	✓	
WALT MC NUTT	✓	
LORENTS GROSFIELD, VICE CHAIRMAN	✓	
BRUCE CRIPPEN, CHAIRMAN		✓

SEN:1995
wp:rlclvote.man
CS-11

4 - 6

{Tape: 2; Side: A; Approx. Time Count: 1.7}

SUSAN GOOD, Montana Association of Life Underwriters
{Tape: 2; Side: A; Approx. Time Count: 4.1}

BILL OLSON, AARP
{Tape: 2; Side: A; Approx. Time Count: 5.5}

GREG OVERTURF, Department of Commerce
{Tape: 2; Side: A; Approx. Time Count: 6.0}

GENE JANUSSI
{Tape: 2; Side: A; Approx. Time Count: 6.9}

ERN BERTLESEN, Montana Senior Citizen's Association
{Tape: 2; Side: A; Approx. Time Count: 8.1}

MORRIS BRUSETT, Montana Conference of Seventh-Day Adventists
EXHIBIT 9
{Tape: 2; Side: A; Approx. Time Count: 9.1}

Questions From Committee Members and Responses:
{Tape: 2; Side: A; Approx. Time Count: 11.4-36.0}

Closing by Sponsor: **SEN. CHRISTIAENS**
{Tape: 2; Side: A; Approx. Time Count: 36.2}

HEARING ON SB 54

Opening Statement by Sponsor: **SEN. DEBBIE BOWMAN SHEA**
{Tape: 2; Side: A; Approx. Time Count: 37.5}

Proponents' Testimony:

GENE KIZER, Montana Board of Crime Control **EXHIBIT 10**
{Tape: 2; Side: A; Approx. Time Count: 40.3}

JOHN CONNOR, Department of Justice
{Tape: 2; Side: B; Approx. Time Count: 8.2}

MIKE CRONIN, Department of Corrections
{Tape: 2; Side: B; Approx. Time Count: 10.2}

Questions From Committee Members and Responses:
{Tape: 2; Side: B; Approx. Time Count: 12.3}

Closing by Sponsor: **SEN. SHEA**
{Tape: 2; Side: B; Approx. Time Count: 26.8}

HEARING ON SB 212

Opening Statement by Sponsor: **SEN. WALTER MC NUTT**
{Tape: 2; Side: B; Approx. Time Count: 28.8}

Proponents' Testimony:

JOHN ALKE, Montana Defense Trial Lawyers
{Tape: 2; Side: B; Approx. Time Count: 31.0}

GLORIA PALADICHUK
{Tape: 2; Side: B; Approx. Time Count: 34.5; Comments: This witness did not sign in.}

JACQUELINE LENMARK, American Insurance Association
{Tape: 2; Side: B; Approx. Time Count: 34.9}

TOM HOPGOOD, State Farm Insurance Company **EXHIBIT 11**
{Tape: 2; Side: B; Approx. Time Count: 35.8}

Opponents' Testimony:

GENE JANUSSI
{Tape: 2; Side: B; Approx. Time Count: 37.2}

RUSSELL HILL, MTLA **EXHIBIT 12**
{Tape: 3; Side: A; Approx. Time Count: 5.3}

Questions From Committee Members and Responses:
{Tape: 3; Side: A; Approx. Time Count: 11.3-28.8}

Closing by Sponsor: **SEN. MC NUTT**
{Tape: 3; Side: A; Approx. Time Count: 28.9}

MOTION/VOTE: **REP. MC CULLOCH MOVED TO ADJOURN.** THE MOTION carried by unanimous voice vote.

EXHIBIT 11
DATE 3/5/97
SB 212

TESTIMONY FOR SENATE BILL 212
STATE FARM INSURANCE COMPANY
PRESENTED TO HOUSE JUDICIARY COMMITTEE
MARCH 5, 1997

Mr. Chairman, Members of the Committee:

State Farm strongly supports Senate Bill 212 from the perspective of fairness. It is important to understand that punitive damages are, in fact, meant to punish a particular party to the litigation. It is also important to remember that in every case, prior to arriving at the decision on punitive damages, the claimant has already been made whole by the jury. At that point all that is left is the issue of punishment.

The requirement that a unanimous verdict is necessary to exact punishment is not foreign to our court system. In the arena designed to exact punishment, (the criminal courts) a unanimous verdict is required.

It is well recognized that our criminal courts are designed to punish offenders. Under the criminal law, that punishment can take the form of a loss of liberty (jail time) or the imposition of financial penalties. In either case, however, a unanimous verdict is required.

"Punishment" also exists in the civil forum. It is called punitive damages. State Farm believes that because this form of

damages is, in fact a punishment, an award of punitive damages should be held to the same standard as punishment in the criminal forum.

Senate Bill 212 involves the issue of basic fairness. The standard necessary to impose punishment should be the same whether we are in the criminal or civil forum. As such State Farm supports Senate Bill 212 and asks this Committee for a DO CONCUR recommendation.

TOM:

EXHIBIT 12
DATE 3/5/97
SB 212

Directors:
Wade Dahood
Director Emeritus
Elizabeth A. Best
Randall Bishop
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
Victor R. Halverson, Jr.
Gene R. Jarussi
Micheal F. Lamb
Peter M. Meloy
James P. Molloy
John M. Morrison
Gregory S. Munro
David R. Paoli

Montana Trial Lawyers ASSOCIATION

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Officers:
Gene R. Jarussi
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John M. Morrison
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Michael D. Cok
Vice President
Patricia O. Cotter
Secretary-Treasurer
William A. Rossbach
Governor
David R. Paoli
Governor

March 5, 1997

Rep. Bob Clark, Chair
House Judiciary Committee
Room 312-1, State Capitol
Helena, MT 59620

RE: SB 212

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to SB 212, which insulates the wealthiest defendants and most outrageous misconduct from Montana citizen juries who determine that punitive damages are warranted.

If O.J. Simpson's civil trial had occurred under SB 212, he would have escaped punitive damages because of the dissenting vote of a single juror.

Current law. Punitive damages serve two important public purposes:

- They punish especially outrageous misconduct; and
- They fit the punishment to the wealth of defendants who could otherwise easily afford to pay compensatory damages.

Montana law (Secs. 27-1-220 and 27-1-221, MCA) already prohibits punitive damages (1) in contract disputes and (2) in cases where a defendant's guilt has been proven by anything less than "clear and convincing evidence."

When Montana juries do find a defendant liable for punitive damages, Montana law already requires them to determine the amount of punitive damages in separate proceedings from the underlying trial (to "cool down"), and Montana law allows judges to reduce excessive jury verdicts.

Comparison to criminal punishment. The synthesized symmetry between unanimous jury verdicts for criminal convictions and punitive-damage awards has surface appeal. After all, we require unanimous jury votes for criminal convictions and punishment. Why not require unanimous jury votes in civil cases where the results are punitive, too?

But the simplicity of this comparison obscures its tremendous flaws.

Only a criminal conviction can lawfully deprive a human being of liberty, his or her most fundamental right. And the State, despite its overwhelming power, can deprive a lone individual of liberty only after the most stringent due process and only to punish and deter the most serious misconduct.

Corporate "persons," however, cannot be punished with incarceration, and not even punitive damages punish or deter outrageous corporate misconduct as truly as jail punishes a human being. Moreover, overwhelming power more often belongs to corporations than to the lone individuals bringing them to court.

Legislative support for punitive damages. Punitive damages are not merely the illegitimate offspring of courts. The Montana Legislature itself, recognizing that serious misconduct deserves penalties beyond mere compensation, has fathered numerous punitive-damage statutes to punish and deter specific behavior, including:

- Illegal gambling (Secs. 23-5-131, 23-5-135, MCA)
- Seduction of a child (Sec. 27-1-514, MCA)
- Excess railroad charges (Sec. 69-14-322, MCA)
- Damage to timber (Secs. 70-16-107, 70-16-108, MCA)
- Price discrimination (Secs. 30-14-906, 82-15-207, MCA)
- Fraudulent or improper liens (Sec. 30-9-432, MCA)
- Injury to livestock or other animals (Sec. 27-1-222, MCA)
- Damage to animal and research facilities (Sec. 81-30-104, MCA)
- Trespassing livestock (Sec. 81-4-307, MCA)
- Defamation (Sec. 27-1-818, MCA)
- Misappropriation of trade secrets (Sec. 30-14-404, MCA)
- Issuance of bad checks (Sec. 27-1-717, MCA)
- False claims to public agencies (Sec. 17-8-231, MCA)
- Failure to pay cigarette taxes (Sec. 16-11-143, MCA)
- Deceit or collusion by attorneys (Sec. 37-61-406, MCA)
- Unfair trade practices (Sec. 30-14-222, MCA)
- Unfair claim settlement practices by insurers (Sec. 33-18-242, MCA)

Recognizing that punitive damages serve important public purposes, the 1995 Legislature considered--and MTLA supported--bills which would have dedicated substantial portions of punitive damage awards to such public uses as schools, health care, or tax reduction. Regrettably, opponents of all punitive damages succeeded in defeating those constructive amendments and now support SB 212.

Again, thank you for this opportunity to express MTLA's opposition to SB 212. Please contact me if I can provide additional information or assistance.

Respectfully,

Russell B. Hill, Executive Director

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 3/5/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH 9:15	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

HOUSE JUDICIARY COMMITTEE

DATE 3/5/97

BILL NO. SB 212 SPONSOR(S) Sen. McNutt

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)
(PLEASE IDENTIFY TYPE OF VISITOR)

PLEASE PRINT

TYPE	NAME	ADDRESS	REPRESENTING
P	Jacqueline Lenmark	Helena	Am. Ins. Assn
O	Glenn R Jarussi	Billings	
P	Dwight Stanton	Missoula	Farmers Ins Groups of Cos
P	Gerald Hamerla	Helena	Farmers Ins Group
P	CHRIS J. GALLUS	HELENA	MT CHAMBER
O	Russell B Hill	Helena	MT Trial Lawyers
P	John Alke	Helena	MT Defense Trial Lawyers
P	Riley Johnson	Helena	NFIB
P	Tom Hopgood	Helena	State Farm Ins Co.
P	Sue WEINBERGER	HELENA	MT Defense Trial Lawyers

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

EXECUTIVE ACTION ON SB 44

Motion: **REP. BOHARSKI moved SB 44 BE CONCURRED IN.**
{Tape: 1; Side: B; Approx. Time Count: 31.6}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 31.7 - 38.1}

Motion: **REP. ELLINGSON moved a conceptual amendment that uninsured and underinsured coverage would follow the person and not the automobile.**

Discussion:
{Tape: 2; Side: a; Approx. Time Count: 0.1 - 6.0}

Vote: The motion carried 8 - 6; REPS. GRIMES, HANSON, ANDERSON, TASH, BOHARSKI and CLARK voting no. (REP. HURDLE voted aye by proxy.)
{Tape: 2; Side: A; Approx. Time Count: 6.1}

Motion: **REP. SANDS moved SB 44 BE CONCURRED IN AS AMENDED.**
{Tape: 2; Side: A; Approx. Time Count: 7.2}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 7.5}

Motion/Vote: **REP. GRIMES moved to table SB 44.** The motion carried 14 - 1; REP. ANDERSON voting no. (REP. HURDLE voted aye by proxy.)

EXECUTIVE ACTION ON SB 212

Motion: **REP. ANDERSON moved SB 212 BE CONCURRED IN.**
{Tape: 2; Side: A; Approx. Time Count: 11.4}

Discussion: **EXHIBIT 1**
{Tape: 2; Side: A; Approx. Time Count: 13.0}

Motion: **REP. BOHARSKI moved a conceptual amendment to page 2, line 1.**
{Tape: 2; Side: A; Approx. Time Count: 31.3}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 32.0}

Vote: The motion carried 8 - 7; REPS. ELLINGSON, PEASE, KOTTEL, SANDS, HURDLE, WYATT and MC CULLOCH voting no. (REPS. SANDS and HURDLE voted by proxy.)

Motion: **REP. BOHARSKI moved SB 212 BE CONCURRED IN AS AMENDED.**

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 33.3}

Motion: REP. GRIMES moved to amend SB 212 with an immediate effective date.
{Tape: 2; Side: A; Approx. Time Count: 34.3}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 34.5}

Motion/Vote: **REP. GRIMES moved substitute amendment language.** The motion carried 8 - 7; REPS. WYATT, HURDLE, SANDS, MC CULLOCH, PEASE, KOTTEL and ELLINGSON voting no. (REPS. SANDS and HURDLE voted by proxy.)
{Tape: 2; Side: A; Approx. Time Count: 36.0}

Motion: **REP. BOHARSKI moved SB 212 BE CONCURRED IN AS AMENDED.**
{Tape: 2; Side: A; Approx. Time Count: 37.0}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 37.1}

Vote: The motion carried 9 - 8; REPS. WYATT, HURDLE, SANDS, MC CULLOCH, PEASE, KOTTEL, BERGMAN and ELLINGSON voting no. (REPS. SANDS and HURDLE voted by proxy.) **REP. ANDERSON will carry SB 212.** *{Tape: 2; Side: A; Approx. Time Count: 42.7}*

HEARING ON SB 31

Opening Statement by Sponsor: **SEN. LOREN JENKINS** **EXHIBITS 2-6**
{Tape: 2; Side: B; Approx. Time Count: 1.3}

Opponents' Testimony:

CORY LAIRD, Montana Catholic Conference **EXHIBITS 7 and 8**
{Tape: 2; Side: b; Approx. Time Count: 16.3}

Informational Testimony:

SANDY HEATON, Department of Corrections
{Tape: 2; Side: B; Approx. Time Count: 18.6}

NORMA JEAN BOLES, Department of Corrections
{Tape: 2; Side: B; Approx. Time Count: 22.2}

Questions From Committee Members and Responses:
{Tape: 2; Side: B; Approx. Time Count: 24.5 - 29.2}

Closing by Sponsor: **SEN. JENKINS**
{Tape: 2; Side: B; Approx. Time Count: 29.3}

Motion/Vote: **REP. MC CULLOCH MOVED TO ADJOURN.**

EXHIBIT 1
DATE 3/6/97
SB 212

Representative Robert Clark
Chairman, House Juduciary Committee
State Capitol
Helena, MT. 59601

March 6, 1997

Re: Senate Bill 212 - Hearing of March 5, 1997.

Dear Chairman Clark:

During yesterday's hearing on Senate Bill 212, there appeared to be some confusion regarding the intended effect of the bill. In particular, I understood some of those testifying to say that the bill, as amended, would require a unanimous jury verdict for the award of punitive damages and a unanimous jury verdict for no award of punitive damages. While I do not believe that the current Sentate Bill 212 has this effect, I want to make my intent clear for your committee's records.

Senate Bill 212 is intended to bring recognition to the fact that punitive damages are, in fact punishment. As such, and similar to financial "penalties" in the criminal forum, fairness dictates that a unanimous jury verdict should be required. For this reason, it has been my intent from the beginning to require a unanimous jury verdict only for the imposition of liability and amount of punitive damages in the civil forum. It is also my intent that, without a unanimous verdict on the issue of liability for punitive damages and the amount of punitive damages, no punitive damages would be awarded. This comports with the requirements for handing down other "punishments" in the criminal forum.

As stated earlier, I believe that the current language of Senate Bill 212 meets my intent as outlined above. However, because of some perceived confusion on the effect of the bill, I want to make sure that your committee understands the sponsor's intended effect.

Thank you for your consideration.

Sincerely,

Walter McNutt

Senator Walter McNutt

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 3/6/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		✓ 1:15
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH 9:10	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓ 1:30		✓

HOUSE STANDING COMMITTEE REPORT

March 6, 1997

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 212** (third reading copy -- blue) **be concurred in as amended.**

Signed: Bob Clark

Bob Clark, Chair

And, that such amendments read: **Carried by: Rep. Anderson**

1. Title, line 4.
Strike: "VERDICT DETERMINING A CLAIM FOR"
Insert: "AWARD OF"

2. Title, line 5.
Strike: "LIABILITY AND"
Following: "AMOUNT;"
Strike: "AND"

3. Title, line 6.
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE"

4. Page 2, line 1.
Strike: "A jury verdict determining"
Strike: "A CLAIM for"
Insert: "An award of"

5. Page 2, line 2.
Strike: "liability and"

6. Page 3, line 2.
Insert: "NEW SECTION. **Section 2. Applicability.** [This act] applies to causes of action that arise after [the effective date of this act].

Committee Vote:
Yes 9, No 8.

3/6
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